statute. The test in *Johnson v. Ballard,* 11 S. C. 178, is the "willingness to pay" on the part of the executor. An expression of such willingness furnishes a new starting point for the running of the statute. The opinion in question relies quite as much on the weight of authority as on the construction of its own statute for the decision rendered. Prior to a law of 1849, this court held that it was competent for an executor, by his promise to pay a debt of the testator, to exempt the case from the operation of the statute of limitations, and that it was no *devastavit* in him to do so. *Bishop v. Harrison,* 2 Leigh (Vir.) 534. It may be well said that the main opinion has done much to clarify the law on this subject.

FERRY FRANCHISE—VOLUNTARY TRANSFER.—EVANS V. KROUTINGER ET AL., 72 PAC. 882 (IDAHO).—*Held,* that a ferry franchise may be voluntarily transferred.

In England the right to transfer a ferry franchise is apparently unquestioned. *Pim v. Currell,* 6 M. & W. 234. And the weight of authority in this country corresponds. *Dundy v. Chambers,* 23 Ill. 369. Such a franchise, however, grows out of a grant by the state. 3 *Kent, Com.* 458. It is a contract wherein the operator assumes certain duties to the public. *Dufour v. Stacey,* 90 Ky. 288. The law of contracts is that duties assumed in them cannot be assigned. *Clark, Cont.,* sec. 223. It is difficult to see why this does not apply to ferry franchises. *The Maverick,* 1 Sprague 23. Indeed some of our courts hold that it does. *Thomas v. Armstrong,* 7 Cal. 286; *Knott v. Frush,* 2 Or. 237. And even the English courts apply a like reasoning to render railroad franchises untransferable. *Winch v. Birkenhead Ry. Co.,* 13 Eng. L. & Eq., 506.

INJUNCTION—LABOR STRIKERS—INTERFERENCES WITH INTERSTATE COMMERCE.—KUNDSEN ET AL. V. BENN ET AL., 123 FED. REP. 636.—*Held,* that employes who have left the service of an employer, because of strike, have no right to interfere with employer's business by persuading, or otherwise attempting to compel, other workmen to leave their work, and an injunction will lie to prevent such interference.

While the opinion of the court in this case is based on well settled principles, a further step has been taken in the enjoining of persuasion by strikers as a means to induce fellow workmen to leave their employment. Acts of violence and force, of course, have been repeatedly enjoined. *In re Debs,* 158 U. S. 725; *U. S. v. Amalgamated Council,* 54 Fed. 994; *Toledo R. R. v. Penn. Co.,* 54 Fed. 730. But all the previous cases have stopped short of declaring the acts of strikers unlawful when the boundary line between force and threats and mere persuasion has been reached. The right of federal courts to enjoin strikers on the ground of interference with interstate commerce has been most recently passed upon in the case of *Wabash R. R. v. Hannahan.* See 12 *Yale Law J.* 448.

MORTGAGE—SALE UNDER POWER—LIMITATIONS.—MENZEL ET AL. V. HINTON ET AL., 44 S. E. 385 (N. C.).—A mortgage was given containing a power of sale. *Held,* that the right of the mortgagee to foreclose by execution is not affected by Code 1883, sec. 152, prescribing a ten-year limitation for an action to foreclose a mortgage or deed of trust, but is unlimited as to time. Clark, C. J., and Douglas, J., *dissenting.*

Mortgage security in general is not deemed to come within any branch of the statute of limitations; *Union Bank of Louisiana v. Stafford,* 12 How. 340; *Heyer v. Pruyn,* 7 Paige (N. Y.) 465, overruling *Jackson v. Sackett,* 7 Wend. (N. Y.) 94, although this rule does not obtain in a few of the western States. *Lord v. Morris,* 18 Cal. 482. The power of sale granted the mortgagee does not affect the security principle involved. The condition must be satisfied. *Joy v. Adams,* 26 Maine 333. In *David v. Maynard,* 9 Mass. 242, and *Lockwood v. Sturdevant,* 6 Conn. 388, notes were barred by the statute while foreclosure on the mortgage securing them was allowed. But see *contra Hutaff v. Adrian,* 112 N. C. 259, on which the vigorous dissenting opinions are based.

PAYMENT—NOTE.—WEBB ET AL. V. NAT. BANK OF THE REPUBLIC, 72 PAC. 520 (KAN.).—*Held,* that the taking of a note from a debtor or a third person for a pre-existing debt is not payment, unless it is expressly agreed to accept such note as payment.

Certain courts dissent from the view. *Thacher v. Dinsmore,* 5 Mass. 299. They reason that it makes possible a twofold payment of the debt. *Smith v. Bettger,* 68 Ind. 254. But the weight of authority supports it. *Peter v. Beverly,* 10 Pet. 532. At the least it works a suspension of the creditor's remedy for the duration of the note. *Cox v. Keiser,* 15 Ill. App. 432. Under either view the rule states merely a rebuttable presumption. *Bunker v. Barron,* 79 Me. 62; *Story, Prom. Notes,* sec. 104. And in all jurisdictions the creditor may agree that the note shall constitute payment. *Seltzer v. Coleman,* 32 Pa. St. 493. In this case the original debt is extinguished. *Hoopes v. Strasburger,* 37 O. St. 390. It revives, however, if there is fraud in procuring the acceptance of the note; *Susquehanna Co. v. White Co.,* 66 Md. 444; or if it is worthless. *Fleig v. Sleete,* 43 O. St. 53.

PRISON RECORDS—PHOTOGRAPHS—MEASUREMENT OF CRIMINALS—MANDAMUS.—IN RE MOLINEUX, 83 N. Y. SUPP. 943.—This was an application for mandamus to compel the State Superintendent of Prisons to surrender certain photographs and measurements taken of the relator while imprisoned as a State convict. The relator, upon a new trial, was acquitted. *Held,* that mandamus did not lie.

The opinion of the court was based on the rule that mandamus will only lie to compel a State official to perform a duty imposed on him by State laws, which did not cover this case, and also on the ground of public convenience. The same question has been considered before in the same state and a like conclusion reached. *People, ex rel. v. York,* 59 N. Y. Supp. 418; *Owen v. Partridge,* 82 N. Y. Supp. 248. The decision is in line with the previous tendency of the courts of New York and other States to restrict redress for invasion of the right of privacy. As the case of *Roberson v. Rochester Folding Box Co.,* 171 N. Y. 538, where the court of appeals denied an injunction to restrain the unauthorized use of photographs for advertising purposes. The violation of individual rights in such cases was, however, further prevented by an act passed at the last session of the State legislature and it would seem that such legislative interference should be extended to protect innocent persons whose likeness and measurements have been placed in the so-called "rogues' gallery" because of former conviction. See "Comment" in this issue.